

August 1, 2020

Andrew Lawler
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NOAA Fisheries
Department of Commerce, Herbert C. Hoover Building
14th and Constitution Ave. NW
Washington, DC. 20230

Re: RFI Response: Interagency Seafood Trade Task Force

Dear Mr. Lawler and the Seafood Trade Task Force,

Thank you for the opportunity to provide input on how best to achieve the objectives of the Seafood Trade Task Force. The President's Executive Order on Promoting American Seafood Competitiveness and Economic Growth provides a tremendous opportunity to address the vast amounts of illegal, unreported, and unregulated (IUU) fishing, initially addressed in Section 5, occurring globally. IUU harvested products compete with the legal domestic catches of U.S. fishermen in the U.S. market and with U.S. exports around the world.

The Seafood Trade Task Force should work together with the Interagency Working Group on IUU fishing established under the Maritime SAFE Act to combat IUU fishing as a key objective in its strategy to protect US fishermen and industry and to promote legal and sustainable US exports globally. Three of the most important strategies to protect U.S. fishermen from unfair competition they face is to strengthen: 1) the U.S. Seafood Import Monitoring Program (SIMP) to ensure that the seafood imported into the U.S. is fully traceable to legal origins by enhancing audits and verification of SIMP data, improving its link to enforcement programs in both NOAA and CBP, and expanding its application to all imported seafood; 2) the tools the U.S. has to identify and engage with other countries to improve their fisheries management practices to prevent IUU fishing, and to establish concomitant penalties and sanctions, up to and including banning seafood imports from the country, if it does not have sufficient control measures to prevent IUU fishing and human rights violations; and, 3) SIMP and Customs requirements to also prevent the entry of products created through the use of forced labor and other, specified human rights violations.

Illegal fishing remains a serious and pervasive problem that is a major cause of fisheries depletion worldwide. IUU fishing continues to be a massive global threat, accounting for up to a third of the world's total fisheries catches and valued at up to \$31 billion annually. Seafood fraud compounds these problems – an estimated 1 in 5 fish tested in the U.S. have been found to be mislabeled. These illegal activities create unfair competition for law-abiding fishermen, a fact that is particularly relevant to U.S. workers who face competition from imports that account for 90% of U.S. seafood consumption. Ultimately, illegal fishing, the use of cheap forced labor on-board vessels and in processing, and seafood fraud occur because it remains profitable and largely invisible to governments, merchants, and consumers. What happens out on the water is too often left unmonitored. Once fish products leave the boat, they are often difficult or impossible to track as they wind their way from boats and processing facilities, to trucks and stores, from country to country, without adequate requirements for traceability

and catch documentation. Traceability and catch documentation established in SIMP, requirements for transparency and adherence to a duty of care for ensuring legal origin and decent working conditions, and an identification system that requires more responsible management in countries with bad actors, are thus critical tools in the fight to combat IUU fishing, forced labor, and seafood fraud, and to help level the playing field for honest U.S. fishermen.

ILLEGAL IMPORTS ARE STILL ENTERING THE U.S.

Seafood supply chains are notoriously opaque. Importers and fish vendors are generally unaware of the role they play in buying and selling illegally caught products. Without routine transparency of fishing practices and traceability of seafood products, it is nearly impossible for responsible businesses to avoid commerce in illegal products, unless they exclusively purchase seafood with effectively audited chain-of-custody certifications.

A significant amount of seafood is imported to the U.S. after first passing through one or more intermediary countries, such as China, for post-harvest processing and subsequent re-export. These subsequent steps introduce additional challenges to traceability and allow for the mixing of legally- and illegally sourced fish. Illegal fish are essentially ‘laundered’ in the processing countries and subsequently enter international trade as ‘legal’ product of the exporting nation.

Irrespective of the route to market, products are often combined from different sources or species that are difficult to distinguish and may be mislabeled. For example, Atlantic cod fillets may be labeled as haddock or blue whiting in mixed shipments to avoid complying with SIMP. Multiple species from multiple jurisdictions may all bear the same packaging for export, masking the origins and actual extent of fishing for the species. Current practices thus allow illegal fish to be concealed, mixed indistinguishably into legal product flows, even for some species that are covered under SIMP, because the requirements are not uniformly applied to all imported seafood. This lack of comprehensive coverage allows for mislabeling and misreporting to avoid compliance.

STRENGTHEN AND EXPAND APPLICATION OF SIMP TO ALL IMPORTS

The most effective solution to combat international illegal fishing and prevent illegal products from entering the U.S. market, or any market, is to establish catch documentation and traceability requirements that improve the transparency of fishing operations and help industry and government better identify the legal origin of products. Within the U.S., NOAA’s SIMP allows the U.S. to provide these types of tools, to better detect and prevent illegal imports from entering the U.S. market.

The absence of comprehensive coverage for all seafood imports in SIMP, however, is a serious impediment to establishing the legal origin of fish products entering the U.S. market. Illegal fishing and seafood fraud are pervasive problems that exist in virtually all foreign fisheries; they are not limited to the few species currently covered by SIMP. Even with the current coverage of products under SIMP, most seafood imports to the U.S. are not covered. This gap provides an easy pathway for billions of dollars’ worth of illegal products to continue to enter the U.S. With SIMP currently only applying to 13 species groups and accounting for less than 40% of U.S. fishery imports by volume and value, the current partial implementation of the program provides an incentive for mislabeling between SIMP-covered and non-SIMP products.

Illegal fishing also depresses prices for fishermen operating legally and gives illegal operators an unfair competitive advantage when competing with domestic U.S. fishermen both in the U.S. market and on the global market. As America's fishing fleet faces unprecedented economic challenges posed by the COVID-19 pandemic and disruption of seafood markets, this unfair competition is, now more than ever, not something U.S. fishermen can afford. There are clear benefits to the expansion of SIMP, including ending the unfair competition these illegal products pose to U.S. domestic fishermen and combatting the environmental degradation illegal fishing causes. In 2016, WWF conducted an economic analysis of illegal imports to estimate the costs imposed on legitimate U.S. producers stemming from illegal practices in foreign fisheries. The analysis focused on the immediate economic impact on U.S. fishermen from unacceptably high levels of illegal imports and found that domestic fishermen could be losing \$1 billion dollars in revenue each year.¹ If the federal government successfully stops all illegal seafood from getting through our borders, U.S. fishermen could see the equivalent of about a 20% raise. Prices are reduced not only by the volume of illegal imports, but also because illegal products come to market without meeting the safety, labor and environmental standards that legitimate fishermen must meet. U.S. fishermen will be better off economically when legal product replaces illegal seafood in the U.S. market.

Robust implementation of the Program is also needed to ensure that information requirements, including for key data elements related to labor practices, can effectively identify the legal origin of products, and prevent the entry of illegal products. As currently implemented, SIMP does not clearly require an importer of record to provide certain key data elements, such as the Unique Vessel Identifier (UVI) or authorization to fish, at the time of entry into U.S. commerce. Moreover, it is unclear if standard auditing procedures for SIMP derived data includes data validation as well as confirmation of collection. Without transparency about audit procedures and how SIMP data are being verified, confidence in the program's efficacy will undermine support for the program and impair importers' ability to get the necessary documentation from their suppliers.

Lastly, to be truly effective, SIMP must be formally embedded as an operation enforcement tool relied on by NOAA Office of Law Enforcement and Customs and Border Protection with clear procedures for actionable intelligence and information transfer. These gaps hamper NOAA's ability to proactively identify at-risk shipments. The failure of SIMP to cover all species, to effectively verify the information currently provided, and to require all key data elements at the time of entry as required in the regulations are serious impediments to establishing the legal origin of all fish products entering the U.S. market. Given that in-port inspection capacity is profoundly limited, NOAA's leadership in making the SIMP as robust, efficient, and sophisticated as possible is essential if the program is to achieve its objective of "ensuring that imported fish and fish products derived from illegal harvest of species designated to be at risk of illegal fishing or seafood fraud can be excluded from entry into U.S. commerce."²

The earlier joint U.S. Government Task Force on Combating IUU Fishing and Seafood Fraud noted that "it is the goal of the U.S. government to eventually expand the program to all seafood at first point of sale

¹ WWF. *An Analysis of the Impact of IUU Imports on U.S. Fishermen*. June 16, 2016.

<https://www.worldwildlife.org/publications/an-analysis-of-the-impact-of-iuu-imports-on-u-s-fishermen>

² NOAA Fisheries, Seafood Import Monitoring Program Final Regulatory Impact Review and Final Regulatory Flexibility Analysis at 18 (2016).

or import,”³ and, that the species listed in the rule of December 2016 are a “first step” in a comprehensive program of reporting on imported seafood. SIMP needs to expand its coverage to include all seafood imports, and changes to the current Program to improve the requirements for catch information, traceability, transparency, verification, and risk-screening are necessary to ensure that illegal products are not entering the U.S. and competing unfairly with U.S. products in trade. NOAA should thus expand the Program to cover all fishery products by a date certain and make necessary changes to Program implementation to ensure illegal products are not entering the United States, including as the result of mislabeling between covered and uncovered products, and competing with honest domestic products.

STRENGTHEN THE U.S. IDENTIFICATION SYSTEM FOR COUNTRIES ENGAGED IN IUU FISHING

The U.S. system for ensuring country level compliance with respect to IUU fishing is derived from mandates in the High Seas Driftnet Fishing Moratorium Protection Act (HSDFMPPA). This act requires NOAA to provide a biennial report to Congress that includes a list of nations with vessels engaged in IUU fishing, fishing that results in bycatch of a protected living marine resource, or that have vessels that fish for sharks on the high seas without equivalent conservation protections as the U.S.. The Act also requires that the U.S. consult with listed nations on addressing the problems identified in the listing and that the United States provide positive or negative certifications to Congress depending on whether the problems have been resolved in the next biennial report. If a country is negatively certified, the U.S. may invoke sanctions. The U.S. system has based its determination on the actions of individual vessels rather than the flag state. While we support the ability of NOAA to identify IUU violations by individual vessels, the narrow focus has led to a pattern in which nations have been positively certified for past performance, and relisted in the very same report, without addressing the underlying conditions at the national level that allow IUU fishing to continue.

Historically, NOAA has erred on the side of caution in listing countries for IUU fishing activities in its biennial report to Congress. When a country is listed, the agency consultation process with identified nations is not action-forcing. In the limited cases where a negative certification has occurred, there has been limited action taken against the country (i.e., limiting port services to specific vessels, but no significant import restrictions). Multiple countries (e.g., Korea, Ecuador), have been identified by NOAA for IUU fishing under multiple biennial reports, given positive certifications, only to be re-identified in future reports. In addition, NOAA’s efforts have been narrowly focused on violations that occur in U.S. waters or of regulations of the four Regional Fisheries Management Organizations (RFMO) of which the U.S. is a member. The United States’ limited interpretation of IUU in this context, which runs counter to the existing legal definition, results in an ineffective deployment of what could be a powerful tool.

To address these limits, the U.S. should apply the existing legal definition of IUU, as codified through Maritime SAFE Act of 2019⁴ and the Illegal, Unreported, and Unregulated Fishing Enforcement Act, to

³ 15 CFR Part 902; 50 CFR Parts 300 and 600; Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-29324.pdf>

⁴ The Maritime SAFE Act was included in the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, sec. 3531-3572.

the HSDFMPA process. This definition should be interpreted broadly to apply to all IUU fishing, regardless of where it occurs, and to include forced labor violations to allow the U.S. to address the most egregious actions of our trade competitors. Additionally, the Task Force should work to increase the coordination and flow of information between NOAA, Customs and Border Protection, Department of State, Department of Labor and other federal agencies as appropriate, and to consider data collected under SIMP and all relevant sources (i.e. not just rely on RFMO data). Increasing and improving data sharing would allow IUU fishing and labor factors to be used more effectively across government agencies and processes for risk-based targeting.

Finally, the Task Force should work with Congress to also make the certification and sanctions authority more reflexive such that NOAA must act. For countries identified and not subsequently positively certified, the U.S. should restrict importation of fish and fish products not only from the vessels engaged in IUU fishing, but more broadly from vessels flagged to that nation. However, at the same time, the U.S. may wish to step up its efforts to provide technical assistance to those countries to help them develop needed capacity.

ADDRESS THE USE OF FORCED LABOR IN FOREIGN FISHING

Forced labor, human trafficking, child labor, and other major human rights violations often co-occur with IUU fishing. Declining fish stocks force boats to fish further out at sea and for longer periods of time, as it becomes harder and harder to turn a profit. To compensate for the higher costs of distant-water fishing, vessel owners often turn to illegal trafficking networks to supply cheap labor at the expense of vulnerable populations, often migrant workers.⁵ Unfair and illegal labor practices, in turn, allow these operators to fish further and more intensively, forcing workers to work as much as 22 hours per day and further jeopardizing overtaxed fish stocks.

As vessels fish in more remote locations for longer periods of time they can take advantage of the low risk of being caught for labor abuses and illegal fishing activities.⁶ Fishermen have been trapped at sea for months and even years and have been abused on board these vessels, including physical abuse and murder. Human rights abuse also extends up the supply chain, where allegations have included workers locked into shrimp peeling plants and similar processing facilities. Furthermore, as with IUU fishing, the violations of labor laws and standards lower the costs of production and depress the price of the product, giving those goods an unfair economic advantage when competing with legal U.S. products caught under stronger labor protections. Faced with this reality, it is important that the U.S. provides strong import controls and, expanded transparency, and oversight to safeguard against both IUU fishing and labor abuses, helping to bring greater transparency to opaque supply chains and level the playing field for U.S. fishermen.

⁵ McDowell, R., Mason, M., and Mendoza, M., 2015. AP Investigation: Slaves may have caught the fish you bought. <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>

⁶ Lewis, S.G., Alifano, A., Boyle, M. and Mangel, M., 2017. Human rights and the sustainability of fisheries. In Conservation for the Anthropocene Ocean (pp. 379-396). Academic Press. Available at: <http://fishwise.org/wp-content/uploads/2017/12/Lewis-et-al-2017-human-rights-and-fisheries-sustainability.pdf>

The U.S. has some programs and authorities designed to combat IUU fishing and human trafficking in supply chains already. These include SIMP as well as the Tariff Act.⁷ The Task Force should ensure that the agencies are using existing authorities effectively to ensure that all products entering into the US market are not produced through IUU fishing **or with forced labor**. The Task Force should also direct the agencies to pursue additional tools under these authorities, including requirements for importers to formally share their due diligence approach and management systems with regards to forced labor in their supply chains. Additionally, the Task Force should encourage effective interagency collaboration, to better connect anti-IUU related processes with expertise around forced labor, including taking advantage of the existing State Department Trafficking in Persons report process and internal agency knowledge, the Department of Labor's List of Goods produced with forced and child labor, and other similar efforts. The Task Force should also support efforts in other countries to put in place and enforce sustainable fisheries management and labor rights systems. Similarly, increased investment in integrated risk analysis and detection systems with a focus on IUU and labor abuses in the seafood trade should be made a priority for the CBP's Commercial Targeting and Analysis Center (CTAC). CTAC already serves this mission but needs to be better supported and integrated with SIMP and other available tools.

As IUU fishing and human rights abuses are linked, so are their solutions. The U.S. has a critical opportunity to provide global leadership on these paired challenges through its market power and standing as a world leader on human rights and sustainable fisheries. Collectively addressing IUU fishing, the forced labor practices that often make it possible, and human trafficking will allow the U.S. and the Task Force to put in place solutions truly capable of driving change for communities, nature, and leveling the playing field for U.S. fishermen and exporters.

CONCLUSION

The global seafood industry faces significant competitive pressures and often operates on thin profit margins, a tough commercial environment that is made worse by the continued worldwide crises of overfishing and stock depletion. These economic pressures encourage a focus on securing cheap seafood supplies. Today, those supplies often arrive through production and marketing chains that lack transparency and accountability, such as what exists in China and other major processing countries. This provides opportunities for large amounts of illegally caught fish, and seafood products created with forced labor, to reach importers. The gaps in the system occur at many levels: at sea, where monitoring, control and surveillance remain frequently inadequate; in ports, where systems to document catches are often weak or non-transparent; and in market countries, where effective systems to require traceability and proof of legal origin are lacking. Coupled with the financial incentives to fish illegally, these gaps allow illegal fishing and forced labor to remain profitable, with devastating effects on global fish populations, workers in the fishing industry, communities that depend on fish for food and the livelihoods of legitimate fishermen.

Many seafood companies honestly believe that no illegal fish products enter their supply chain, but the extensive mixing of product at-sea and at the processing stage, in countries like China, means that laundered illegal fish and those produced with forced labor are still present. In addition to more rigorous

⁷ Tariff Act Sec. 307 as amended by the Trade Facilitation and Trade Enforcement Act "[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited."

inspection and border controls aimed at detecting and deterring illegal imports, the expansion and strengthening of SIMP to include all species, and address forced labor, would address the lack of transparency and traceability in seafood supply chains.

Illegal fishing activities remain a major problem for the seafood industry and seafood consumers and, the lack of transparency in highly complex and diffuse wild seafood supply chains allows illegal and unreported catches to be easily laundered and mixed into legitimate supplies entering international trade. However, the NOAA Seafood Import Monitoring Program, the Tariff Act, and the Identification Process for nations engaged in IUU provides the U.S. Government and the Task Force with a set of tools to combat IUU, prevent illegal products from entering the United States and to protect consumers, the environment, and U.S. fishermen and exporters operating legally from this unfair competition.

Sincerely,

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